

LOTTERY RISK BO, LTD.

IBLA 85-101

Decided August 15, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application W 78344.

Affirmed.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Rentals

Where BLM mails a notice to the first-drawn applicant in a simultaneous oil and gas lease drawing requiring the applicant to execute a lease offer and to tender the first year's rental in accordance with 43 CFR 3112.6-1(a), the failure to return the rental payment and executed lease offer within the 30-day period properly results in rejection of the offer.

APPEARANCES: Robert E. Boyce and Saxon J. Wraith, Esq., Chula Vista, California, for appellant; Lowell L. Madsen, Esq., Departmental Counsel, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Lottery Risk BO, Ltd., has appealed from an October 3, 1984, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting simultaneous oil and gas lease application W 78344. Appellant filed its application in the November 1981 simultaneous drawing obtaining priority for parcel WY 9197. On August 20, 1984, BLM mailed the lease agreement and request for rental to appellant. 1/ Appellant received it on August 24, 1984. The rental and executed lease offer forms were received by BLM on September 25, 1984. 2/

In accordance with 43 CFR 3112.6-1(a), the signed lease agreement and rental payment are required to be filed in the proper BLM office within 30 days from the date of receipt of the notice. Regulation 43 CFR 3112.5-1(c)

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1/ The delay between selection of appellant's application and the forwarding of the lease agreement was occasioned by administrative and judicial litigation affecting the lease in question.

2/ Sept. 23, a Sunday, was the 30th day. Therefore, receipt on Monday, Sept. 24, would have been timely.

provides that the application of the first-qualified applicant "shall be rejected if an offer is not filed in accordance with § 3112.6-1 of this title."

BLM rejected appellant's application because the rental and lease offer forms arrived one day late.

On appeal appellant contends it acted with due diligence in forwarding the lease forms and rental. It states the delay between submission of its application and receipt of the lease offer forms required that appellant's 12 partners be contacted to determine their intent after the passage of so much time. Appellant asserts that after the partners were contacted, the offer forms and rental payment were placed in the mail in Chula Vista, California, on September 20, 1984. Appellant admits, however, that BLM did not receive it until September 25, 1984. 3/

[1] The Board has held many times that failure to file a completed lease offer and/or to tender the first year's rental within the prescribed period mandates rejection of the application. JoAnn S. Bennett, 87 IBLA 121 (1985); Robert D. Nininger, 16 IBLA 200 (1974). In affirming the Board's decision in Nininger, the District Court held, "The regulations \* \* \* are mandatory, and apply to the plaintiff. Said regulations do not permit the consideration of excuses for failure to timely remit payment." Nininger v. Morton, No. 74-1246 (D.D.C. Mar. 25, 1975). See also Dawson v. Andrus, 612 F.2d 1280 (10th Cir. 1980); Fred William Berger, 81 IBLA 344 (1984).

BLM has no authority to consider excuses for a late payment or to exercise discretion to accept a late payment under 43 CFR 1821.2-2(g) because of the intervening rights of the second and third priority applicants. 4/ Beverly J. Macdowell, 71 IBLA 23 (1983) and cases cited therein.

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3/ On Jan. 22, 1985, counsel for BLM filed a motion to dismiss this appeal claiming that according to its records appellant had failed to serve counsel with a copy of its statement of reasons as required by 43 CFR 4.413. In response appellant provided a copy of a certified mail return receipt card showing receipt by the Regional Solicitor of appellant's statement of reasons. Counsel for BLM has not pursued its motion. The motion is denied.

4/ 43 CFR 1821.2-2(g) provides:

"When the regulations of this chapter provide that a document must be filed or a payment made within a specified period of time, the filing of the document or the making of the payment after the expiration of that period will not prevent the authorized officer from considering the document as being timely filed or the payment as being timely made except where: \* \* \*.

"(2) The rights of a third party or parties have intervened."

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

Gail M. Frazier  
Administrative Judge

